

7/1493-264

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF FLORIDA

-----X  
ARTHREX, INC.,  
a Delaware Corporation,

Plaintiff,

v.

INNOVASIVE DEVICES, INC.,  
a Massachusetts Corporation,

Defendant.  
-----X

Civil Action No.  
99-851-CV-ORL-18C

**DECLARATION OF JEFFERY M. WHELAN**

I, Jeffery M. Whelan, 36 Inverrary Lane, Sugarland, Texas 77479, hereby declare as follows:

1. I am an orthopedic surgeon practicing at the Kelsey-Seybold Clinic, Orthopedics at 2727 West Holcombe Boulevard, Houston, Texas 77027.
2. I am the sole and original inventor of the surgical technique disclosed and claimed in U.S. Patent No. 5,918,604.
3. I conceived of the surgical technique disclosed and claimed in U.S. Patent No. 5,918,604 at the 13<sup>th</sup> Annual Meeting - Arthroscopic Surgery of the Shoulder, held in San Diego, California from June 26 to June 29, 1995. A copy of the first sketches of the invention, which I drew at the meeting on the last page (a blank page) of the bound meeting

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handout, and a copy of the cover page of bound meeting handout, are attached hereto as Exhibit A. The two parallel vertical lines in the lower sketch represent the femoral socket. The line which dips down in a U represents the suture strand extending across the socket and pulled down out of the socket in a loop, receiving a looped tendon, represented by the oval-shaped lines at the bottom of the sketch.

4. From June 1995 until about September 1996, using mechanical models and cadavers, I experimented with and refined the surgical technique which I had conceived of at the San Diego meeting. In September 1996, I met with Joe Garbo, an Arthrex representative, and told him about the surgical technique which I had invented. Mr. Garbo was interested in the technique and, after signing a non-disclosure agreement with Mr. Garbo (Exhibit B hereto) on September 19, 1996, I provided Mr. Garbo with a written invention disclosure (Exhibit C hereto) that I had prepared on that date, showing the technique using a series of sketches. Shortly thereafter, Mr. Dennis Donnermeyer, Vice President of Sales and Product Research of Arthrex, contacted me, told me that he had spoken with Joe Garbo, and expressed interest in receiving a videotape showing my technique of loading tendons into the femoral tunnel. A copy of Mr. Donnermeyer's letter to me dated September 26, 1996, confirming his interest in receiving the videotape, is attached hereto. Exhibit E. I understand that Mr. Donnermeyer has a copy of the videotape which I sent him shortly after receiving his letter. See Exhibit D to Donnermeyer Declaration.

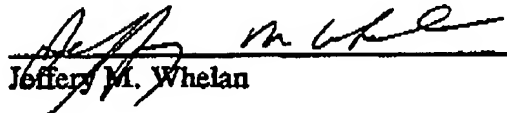
5. I have read the Declaration of Dennis D. Donnermeyer dated October 19, 1999. I agree with the statements in paragraphs 3 and 4 of Mr. Donnermeyer's declaration

that my sketches dated September 19, 1996 evidence that I had conceived of the invention recited in claims 1, 2, 5, 7, 8 and 9 of U.S. Patent No. 5,918,604 at least as early as that date. In fact, as stated in paragraph 3 above and evidenced by Exhibit A hereto, I had conceived of the basic technique in June 1995 at the 13<sup>th</sup> Annual Meeting - Arthroscopy of the Shoulder in San Diego, California. Mr. Donnermeyer's letter to Timothy W. Gibson, M.D. dated January 31, 1997 (Exhibit C to Mr. Donnermeyer's Declaration) mistakenly refers to this meeting as the "AANA Shoulder Meeting in Chicago."

6. Dr. David Lintner, the author of the Innovative Devices' Instructional Technique for SlingShot Cross Pin fixation (Exhibit D hereto), is an orthopedic surgeon at the Baylor College of Medicine, in Houston, Texas, where I am also on staff. Dr. Lintner and I both practice at St. Luke's Medical Center in Houston, Texas. Dr. Lintner learned of the technique described in Exhibit D from me.

I hereby declare under the penalty of perjury that the forgoing is true and correct to the best of my knowledge.

Date: October 20, 1999

  
Jeffery M. Whelan